IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.996 OF 1996

Deccan Processors Pvt. Ltd.,
Ichalkaranji, District Kolhapur ...Appellant.

V/s.

The Government of Maharashtra
through the Collector, Kolhapur,
District Kolhapur. ...Respondent.

WITH
FIRST APPEAL NO.1016 OF 1996

Deccan Processors Pvt. Ltd. ...Appellant.
Ichalkaranji, Dist.Kolhapur.

V/s.

The Government of Maharashtra,
through the Collector, Kolhapur,
District Kolhapur ...Respondent.

WITH

FIRST APPEAL NO.1017 OF 1996

Deccan Processors Pvt. Ltd.
Ichalkaranji, Dist.Kolhapur ...Appellant.

V/s.

The Government of Maharashtra
through the Collector, Kolhapur
District Kolhapur. ...Respondent.

Mr.Umesh Malkapure with R.V.More for the Appellant.
Mr.A.R.Pant, A.G.P. for the State.

CORAM: R.M.S.KHANDEPARKAR &
V.M.KANADE,JJ.
DATE : 6th October, 2005.

ORAL JUDGMENT: (Per V.M.Kanade,J.)

1. Appellant is the original claimant who is challenging the judgment passed by Additional District Judge being LAR No.14 of 1988, 37 of 1988 and 36 of 1988. All these three Appeals can be disposed of by common judgment since three Appeals are in respect of 3 pieces of land out of Survey No.642/2/B. In respect of First Appeal No.996 of 1996, Land Survey No.643/3, area admeasuring 83 R, in respect of First Appeal No.1016 of 1996, Land Survey No.642/2B, area admeasuring 1 hectare 40 R and in respect of First Appeal No.1017 of 1996, Land Survey No.643/4, area admeasuring 28 R which are situated at Ichalkaranji and are adjacent to each other.

2. The Notification under section 4 was published in Official Gazette dated 27/2/1986 in respect of all these three lands. Award was passed on 7/5/1987 and the Special Land Acquisition Officer awarded compensation to the present claimant at the rate of 1200 per R. Against the said Order, Application under section 18 was filed within time by the Appellants herein and compensation at the rate of Rs.60/- per square foot was claimed.

3. The Land Reference Court did not accept and did

not rely on any of the said instances on which reliance was placed by the Appellants. Land Reference Court also did not accept the evidence given by the witnesses who had deposed in favour of the claimants. The Land Reference Court therefore, held that the compensation awarded by the Land Acquisition Officer was fair market price of the land at the relevant point of time. The Land Reference Court further observed and gave a finding that since the claimants had accepted compensation without protest, they were not entitled to claim higher compensation by filing reference. And therefore, on these two grounds the Reference Court dismissed the Application for enhancement which was filed by the claimants.

4. The learned counsel appearing on behalf of the Appellants submitted that the Reference Court had clearly erred in law in rejecting the Application for enhancement on the ground that the claimants having accepted compensation without protest reference itself got maintainable. He submitted that it is an admitted position that the Reference was filed within time and within the period of limitation. He submitted that the References having been filed within the time, merely because the Claimants have accepted compensation which was given by Special Land Acquisition Officer by itself would not debar the claimants from claiming the compensation.

5. The Learned A.G.P.Mr.Pant appearing on behalf of the State fairly conceded that the observation placed by the Reference Court on this point was not in accordance with law as admittedly, the claimants had filed Reference within the period of limitation. He however submitted that the Reference Court had also taken into consideration the evidence which was brought on record by the claimants and on merits had dismissed the claim of the Original claimants. And therefore, merely because Reference Court had given a finding that the Reference is not maintainable, in the First Appeal that would not be the ground for setting aside the award passed by the Reference Court.

6. As regards the First contention raised by the learned counsel appearing on behalf of the Appellants which is fairly conceded by the learned A.G.P., in our view, the Reference Court clearly erred in holding that the Reference which was filed by the claimants is not maintainable since compensation was accepted by the claimants under the protest. It is well settled principle and it has been consistently held by this Court that the merely because the claimants accepted compensation which is offered by the Land Acquisition Officer that by itself would not debar the claimants from seeking enhancement of claim provided. The Reference is filed within a period of limitation prescribed

under section 18 of the Land Acquisition Act. It is only in cases where the claimants accept compensation which is offered to them by Land Acquisition Officer and do not file Reference Application within a period of limitation and in cases however, where Government disputes the fact of acceptance under protest, it has been held that the Government has to establish this fact before the Reference court and thereafter Reference Court can give findings on that aspect. In the present case, however, in view of the admitted position that the Reference was filed within a period of limitation and there being no dispute about Reference being filed within the period of limitation, the question as to whether amount of compensation was accepted under protest or not does not arise nor was it raised by the Government. The said finding in our view therefore, is liable to be set aside.

7. The learned counsel appearing on behalf of the Appellants thereafter invited our attention to various sale instances on which reliance was placed by the Appellants. So far as the first sale instance on which reliance was placed, the compensation was paid in the year 1991 and therefore, the Reference Court has rightly taken into consideration the said sale instance. The other sale instances also is nowhere near the date of Notification which was issued under section 4 and they were admittedly

situated at quite a distance from the land in question. Though the claimants had examined Shri Kamlakar Vithoba, P.W.3 who had deposed that his land which was in the adjoining area of the land which was acquired he conceded that he had purchased a plot in the year 1985 and the plot was developed and facilities like electricity, drainage were available. The land in question however, admittedly is an agricultural land and no facilities and basic amenities were made available to the said plot. Reference Court therefore, in our view rightly did not take into consideration the said sale instance on which reliance was placed by the claimants. The sale instance about which reference was made by P.W.2 Abhaykumar Shah pertains to purchase of one plot admeasuring 1000 square foot on 18.8.1986. However, no evidence was brought on record to show that the said land was similar or comparable to the lands of the claimants. Moreover, the said land was nearly 3 kilometres away from the land of the claimants. In our view, Reference Court therefore, has properly appreciated the evidence on record and in absence of any comparable sale instances has accepted the compensation fixed by the Special Land Acquisition Officer, in our view, therefore, there is no reason to interfere with the said reasoning, findings recorded by the Reference Court. There is no substance in the submissions made by the learned counsel appearing on behalf of the Appellants.

8. First Appeal Nos.996 of 1996, 1016 of 1996 and 1017 of 1996 are accordingly dismissed.

(R.M.S.KHANDEPARKAR,J.)

(V.M.KANADE,J.)